

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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In the Matter of)
Universal Service Administrative Company)
Report to FCC, Evaluation of the)
Rural Health Care Program)

DA 99-521
CC Docket No. 96-45 and
CC Docket No. 97-21

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**Reply Comments of the
Rural Utilities Service**

The Rural Utilities Service (RUS, the Agency), a rural development agency of the United States Department of Agriculture, actively supports and promotes the universal availability of a broad range of telecommunications and information services in rural America. The RUS and its predecessor agency, the Rural Electrification Administration, have made significant investments in rural telecommunications services throughout the nation.

The RUS is pleased to comment on the March 5, 1999 Universal Service Administrative Company (USAC) Report to the Federal Communications Commission (FCC) and offer recommendations to improve the administration and value of the Rural Health Care component of the E-rate discount program.

The E-RATE & DLT

The RUS has been a strong proponent of the E-rate program. By providing discounted services to schools, libraries and rural health care providers, the E-rate ensures that rural America is part of the information age. Rural America has benefited substantially from the schools and libraries component of the E-rate. If properly implemented, rural health care (RHC) discounts will also provide significant benefits to rural communities.

The RUS has had a preview of the great advantages of bringing telecommunications, education and health care together. The Federal partnership with rural America has been long-standing. Initiatives such as the RUS Distance Learning and Telemedicine Loan and Grant Program (DLT) strengthen that partnership.

This program enhances the quality of life in rural communities by providing life saving and educational opportunities once available and affordable only in our nation's cities. Since 1993, the RUS has made approximately \$63 million in grants and \$5 million in loans as part of the DLT program. The funding is helping over 1,000 schools and learning centers to provide increased educational opportunities to rural students and residents and, enhances health care at over 725 hospitals and rural health clinics. During the 1999 Fiscal Year, the RUS will make

\$12.5 million available for DLT grants and \$150 million available for DLT loans.

One lesson RUS has learned is that high monthly costs are a significant impediment to sustainable distance learning and telemedicine projects. The Telecommunications Act of 1996 recognized the need to provide discounts for telecommunications services to schools, libraries, and rural health care providers (the E-rate). E-rate discounts will reduce the cost of internal connections and the recurring monthly charges for telecommunications services and help solve that problem. Those discounts provide part of the equation. The other part is provided by the DLT program, which focuses on end-user equipment. Together they provide powerful assistance in making modern telecommunications technology, enhanced learning opportunities, and health care services affordable and available to rural citizens. The E-rate and DLT programs also improve rural economic development in rural areas through access to the information superhighway.

The RUS has just published a direct final rule in the March 25, 1999, Federal Register to streamline the DLT program. These amendments to the current DLT regulation clarify the requirements for the different types of financial assistance offered; streamline policies and procedures for obtaining loans and expanding the purposes for which loan funds can be used; and award grants on a competitive basis. It is anticipated that information regarding loan and grant application requests and a funds availability announcement will be available by May 1999.

It is through our experience with assisting over 725 hospitals and rural clinics through telemedicine projects that the following suggestions to improve the utilization and administration of RHC portion of the E-rate program are offered to the FCC and the USAC.

ADMINISTRATIVE EFFICIENCIES

The ratio of administrative costs to program costs is related in significant part to the current design of the RHC discount program that limits the number of program participants and eligible services.

The USAC and the FCC, however, should act expeditiously to implement administrative efficiencies envisioned by merging the Rural Health Care Corporation, Schools and Libraries Corporation and the Universal Service Administrative Company. Merging RHC discount operations with other USAC entities performing similar functions should reduce overhead costs.

It is also imperative that every effort be made to simplify the RHC discount application and discount calculation process. The application process is simply too complex. Rural Health Care providers are not telecommunications experts and have very limited staff to comply with the multi-step application process. While health care providers are the beneficiaries of the RHC

discounts, it is telecommunications carriers that receive the financial benefit of RHC discount offsets and reimbursements, as well as the benefits of increased demand and plant utilization. State and federal agencies regulate these entities and virtually all are participants in other universal service programs administered by NECA and USAC. Combined with the telecommunications carriers' obligations to abide by FCC, NECA and USAC rules, a simplified application process can adequately protect against waste, fraud and abuse.

The RUS is convinced that if the application and discount calculation processes are simplified and the participation and service eligibility rules made consistent plain meaning of Section 254 of the Telecommunications Act of 1996 (the 1996 Act), demand for RHC discounts will increase. With this increase in demand, and necessary administrative savings and consolidations, costs relative to program levels will be more reasonable.

ETC LIMITATION

The RHC discount program should not be limited to services offered by telecommunications carriers that are designated as Eligible Telecommunications Carriers (ETCs). This limitation inhibits the usefulness of the current program. Section 254 (h) is very clear that all telecommunications carriers must provide RHC discounts and that all telecommunications carriers are entitled to have those discounts offset their universal service obligations.

Section 254 (h) of the 1996 act provides that, "(a) telecommunications carrier shall...provide telecommunications services which are necessary for the provision of health care services...including instruction related to such services...to any public or nonprofit health care provider that serves persons who reside in rural areas...at rates that are reasonably comparable to rates charged for similar services in urban areas..."

The provision further provides that "A telecommunications carrier providing service under this paragraph shall be entitled to have..." the rate differential treated as part of its universal service obligation.

Nothing in the plain language of Section 254 (h)(1)(A) limits availability of RHC discounts to ETCs. It has been argued that unlike Section 254 (h)(B)(ii) which provides for reimbursements to carriers for discounts offered to schools and libraries, 254(h)(1)(A) does not contain a "notwithstanding...subsection (e)" proviso thereby requiring RHC participation be limited to ETCs. This reading misunderstands the structure of Section 254 (h) and ignores the absence of the "subsection (e)" proviso in 254(h)(B)(i) that is the parallel offset provision to the second sentence of the 254(h)(1)(A).

E-rate discounts provide for reimbursements under subsection 254(h)(B)(i) and under the general universal service principles. The "subsection (e)" proviso was necessary to permit non-ETCs to

receive E-rate discount reimbursements. However, under 254(b)(4) and 254(d) all carriers must contribute to mechanisms established to preserve and advance universal service. Section 254(h)(B)(i) and the second sentence of 254(h)(1)(A) do not contain the "subsection (e)" proviso, because both go to the universal service obligations of telecommunications carriers and providers. Therefore, no "subsection (e)" proviso is needed. Furthermore, to have the obligation, without the opportunity to offset that specific universal service contribution would violate the 254(d) mandate for contributions which are equitable and nondiscriminatory.

As a matter of law, participation in the RHC discount program should not be limited to telecommunications services provided by ETCs. It is also important to extend coverage as a matter of policy. Long distance and toll charges are among the increased costs of rural telemedicine compared to urban telemedicine. The medical expertise available in most urban centers is more than just a local call away from rural areas and long distance service should be included as a supported service.

ALL TELECOMMUNICATIONS SERVICES SHOULD BE COVERED

As discussed above, the plain language of Section 254 (h) applies to all services which are necessary for the provision of rural health care services and instruction. Current rules significantly limit the value of RHC discounts to telemedicine practitioners. These restrictions also stand as a barrier to infrastructure investments in telemedicine projects and are also contrary to the letter and spirit of Section 706 of the 1996 Act.

Since we would expect the medical care community to be in the forefront of users of advanced telecommunications service, we believe the current supported bandwidth of 1.54Mbps may be inadequate. With the rapid evolution of high-speed broadband networks, such as urban residential service approaching the 1.54 Mbps capability, the medical community needs are expected soon to significantly exceed this level.

RHC discounts should be expanded, but the FCC and USAC should make clear that only telecommunications services are covered by RHC discounts. Consistent with the RUS exparte comment filed on June 10, 1998, (CC Docket 96-45) on improvements in the schools and libraries portion of the E-rate program, there should be no confusion that paint, carpeting, structural and other non-telecommunications service costs are not eligible for RHC discounts. Other federal programs such as the RUS DLT program are available to assist with the financing of end user hardware and facilities used in telemedicine projects.

DISTANCE RULES

The current length limitations to eligible services should be abandoned. These limitations have unfairly limited the utility of RHC discounts to many rural communities and imposes an extreme

hardship on any rural provider where the maximum allowable distance rules preclude connection to the needed bona fide urban medical center. Maximum allowable distance artificially limits the choice to the nearest town with a population of 50,000 which may not have the medical capabilities needed by the rural health care provider. This limitation manifests particularly unfair treatment on telemedicine projects in the State of Hawaii where distance and insularity impose high costs above and beyond distance. Valuable medical networks could be created among and between rural hospitals, clinics and instructional institutions regardless of their proximity to a town of 50,000. The test should be the reasonableness of the network created.

Additionally, long distance telecommunication services are completely excluded from program support. Geographic isolation especially in the State of Alaska translates into higher costs for telecommunications service providers by not allowing any recovery of these excess costs.

Distance related charges, whether they consist of facilities charges or long distance charges, or whether they are provided by ETCs or non-ETCs, ultimately result in excess rural telecommunications costs. And the discount formula of support as a percentage of cost, if such costs were exorbitant, would not meet the needs of rural health care providers. These service costs must be brought down to a level as if it were provided in an urban area. RUS recommends that rural service charges are benchmarked to the charges in the largest city in a state and the discount would be the difference between the total rural cost for a requested service and the equivalent urban cost.

THE DEFINITIONS OF RURAL HEALTH PROVIDERS SHOULD BE EXPANDED

The current limited definitions of eligible recipients of RHC discounts preclude legitimate rural health care providers from qualifying for RHC discounts and should be expanded. The 1996 Act does not define the term "rural health clinic." The Webster's dictionary defined a clinic as "an institution or station often connected with a hospital or medical school for the examination and treatment of out patients." Giving a plain reading to this term would include facilities providing medical services at extended care facilities, nursing homes, educational institutions and skilled care facilities. The essential element of the definition of clinic should be "examination and treatment."

The definition of consortium should also be modified to comply with the 1996 Act. Under Section 254 (14)(B)(vii) consortia of health care providers must include only one of the entities described in clauses (i) through (vi).

Under the plain reading of the statute, an eligible health care provider consortium can include for-profit entities, as long as the consortium itself is non-profit and providing service to rural residents.

The FCC and USAC should also emphasize that RHC telecommunications discounts are available for instruction related to rural health care services. There is a significant need in rural areas for health care, emergency medical, pharmacy and public safety professionals to have access to continuing education courses, instruction on new technologies and treatments as well as basic instruction necessary to join the various medical fields. By making medical instruction available in rural areas, local residents can develop the skills necessary to address the needs of rural medically under-served areas.

COMMUNITY USE IS NOT RESALE

Community use of distance learning and telemedicine facilities should be encouraged, so long as community users are not charged for the use of discounted telecommunications services. Instruction is a key purpose of the RHC discount provisions of the 1996 Act. The RUS has found that distance learning and telemedicine facilities become an important community asset, allowing for continuing education opportunities for scout troops, emergency medical professionals, and community service organizations. The introduction of telecommunications technologies to new audiences also builds demand for new services at home and the addition of advanced infrastructure to service distance learning and telemedicine users supports the national goal of broadband deployment and creates new opportunities for economic development. These community benefits and demand enhancing results are part of the universal service vision of the 1996 Act.

COORDINATED OUTREACH

The RUS is an enthusiastic supporter of school, library and rural health care discounts under the 1996 Act. We have included references to the availability of these discounts in material and presentations on our DLT and basic infrastructure programs. We participate in several groups dedicated to expanding educational and health care opportunities in rural areas. We welcome the opportunity to participate in more outreach efforts. It would be beneficial for the FCC, USAC and other federal agencies to coordinate outreach. There is very little overlap in federal programs directed toward distance learning and telemedicine, but together they weave a fabric of coherent policy to utilize information age technologies to improve the quality of life for all Americans.

RELEASE OF FUNDS

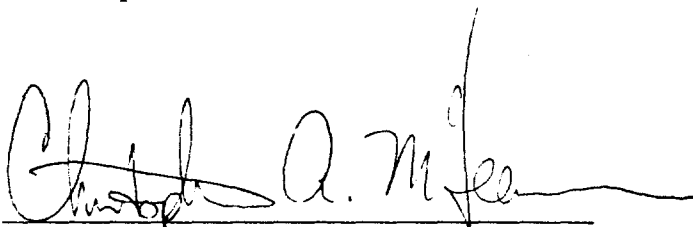
The RUS supports significant reforms in the RHC discount program. It may be necessary to delay slightly the opening of new eligibility for discounts until the FCC can act on the rule changes necessary to successfully implement this important program. That regulatory reform effort should be expedited and should in no way delay the obligation and release of funds to those who have applied under the current rules. It is critically important that those who applied in good faith for RHC discounts should see the benefits of the program as soon as possible. This

will help build confidence in the program and encourage telecommunications carriers to vigorously serve the rural health care market. If the second round of applications is to be delayed, the existing applicants should have their eligibility and discounts extended until the full implementation of the next round, so that there is a seamless transition from one regulatory regime to the next.

CONCLUSION

The RUS has seen how the application of telecommunications technologies to health care and education can change and save lives. The FCC has an important responsibility to ensure that the universal service vision of the 1996 Act is fulfilled. The reforms of the RHC discount program can help make that vision a reality. The RUS appreciates the opportunity to comment on this important matter and will work with the FCC, USAC and our fellow federal agencies to make certain that this program is a success.

Dated: April 5, 1999

A handwritten signature in black ink, appearing to read "Christopher A. McLean", written over a horizontal line.

CHRISTOPHER A. McLEAN
Deputy Administrator
Rural Utilities Service